



February 28, 1997

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1919 M Street, N.W.
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To whom it may concern,

Please accept the enclosed comments from the WGBH Educational Foundation in the matter of the Notice of Proposed Rulemaking on Video Programming Accessibility, MM Docket No. 95-176.

Thank you,

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In the Matter of)
)
Closed Captioning and Video Description)
of Video Programming)
) MM Docket No. 95-176
Implementation of Section 305 of the)
Telecommunications Act of 1996)
)
Video Programming Accessibility)

NOTICE OF PROPOSED RULEMAKING

COMMENTS OF THE WGBH EDUCATIONAL FOUNDATION

I. INTRODUCTION

1. The WGBH Educational Foundation ("WGBH") welcomes the opportunity to comment on this matter before the Federal Communications Commission. WGBH has been active in the field of Video Programming Accessibility since 1971 when the U.S. Department of Health, Education and Welfare requested that WGBH utilize its production capabilities to help make television accessible to deaf and hard-of-hearing viewers. With the captioning of "Julia Child's French Chef" and the establishment of The Caption Center, the process of equalizing the usability of television for all Americans began in earnest.
2. Throughout the 1970s, as "The French Chef" was joined by "The Captioned ABC Evening News" and other programs captioned and distributed by WGBH and the Public Broadcasting Service, WGBH's mission included a strong commitment to accessibility. This mission was carried out through technological development, consumer and industry outreach, and research into improvement of the comprehensibility and utilization of captioning.
3. Upon the development and proliferation of closed captioning in the late 70s and early 80s, the availability of the service began to grow exponentially. The Caption Center was joined by other captioning agencies and more programming and funding partners became supporters for both public service and marketplace reasons. Throughout this time and up to the present, WGBH has continued to fulfill its mission of serving underserved audiences by disseminating information and technology, helping shape public policy, and developing new technologies and services (such as its Descriptive Video Service® for people who are blind or visually

impaired and the CPB/WGBH National Center for Accessible Media (NCAM) which extends WGBH's research and development efforts into the new media of the Information Age).

4. Today, The Caption Center at WGBH has more than 120 employees in offices in Boston, New York, and Los Angeles and provides services for every segment of the television and video marketplace. Throughout its entire history, The Caption Center has relied upon and actively supported a partnership among consumers, program producers and providers, the public sector, and funders both public and private. It is in the spirit of this successful partnership that the following comments are provided to the Commission in this Notice of Proposed Rulemaking.

II. BACKGROUND

1. Current Availability

The Commission has provided a valuable summary of the relevant provisions of the Telecommunications Act of 1996 and its resulting obligations¹. The Commission's explanation of the current regulation and availability of closed captioning is also of great value and was clearly needed as indicated in its *Notice of Inquiry* of December 1, 1995² and its subsequent *Report*.³

2. As a party which responded to the *Inquiry*, WGBH is aware of the difficulty of gathering together in one place all relevant information needed for the Commission to make appropriate determinations for its subsequent *Rulemaking*. The *Rulemaking's* summarization of the Current Regulation, Availability, Methods, and Resources in sections II. C through F is accurate with but a few exceptions, as follows.

3. Section II. D. "Current Availability of Programming with Closed Captioning" item 3 incorrectly states that "the few PBS programs that are not closed captioned are visually oriented (e.g., ballet or other dance performances), or are non-verbal in nature (e.g., a symphony concert)." This holds true for the core programming provided by PBS' National Program Service. However, many stations are airing programming from PBS' alternative programming offerings, Schedule X and PBS Plus, and these programs are, in general, not captioned.

¹ Pub. L. 104-104, 110 Stat. 56 (1996). Section 713 to the Communications Act, 47 U.S.C. § 613.

² *Closed Captioning and Video Description of Video Programming*, Notice of Inquiry, MM Docket No. 95-176, FCC 95-484, 11 FCC Rcd 4912 (1996).

³ *Implementation of Section 305 of the Telecommunications Act of 1996 - Video Accessibility*, Report, MM Docket No. 95-176, FCC 96-318 (released July 29, 1996).

4. Item 5 in the same section states, "In the last few years, most syndicated programming has included closed captioning." While this is true for many talk shows, game shows, and magazine shows, consumers have continued to complain about lack of captions in syndicated movie packages. The irony is that many of these movies were previously captioned for home video, pay cable, or network broadcast and only minor effort would be needed to include the captions with their syndicated release.

III. CLOSED CAPTIONING REQUIREMENTS

A. Responsibility for Captioning

1. Shared responsibility

The Commission rightly proposes that "the responsibility for compliance with our closed captioning requirements should be placed on video programming providers..." This is the appropriate seating of responsibility for the reasons the Commission states (the direct link with consumers, the providers' role in the purchasing of programming from producers), as well as the fact that it is the providers and not the producers who fall under the Commission's jurisdiction.

2. We also agree that captioning should be handled as far "upstream" in the production process as possible (i.e., by the original program producers) to assure efficiency and lack of duplication of effort as the program migrates to various providers. The costs of captioning can and will be shared, but the method of apportioning these costs among the relevant parties is a matter for the authors of program licenses and contractual arrangements to decide. Producers and providers have significant experience in apportioning similar costs such as promotion, tape duplication, music rights, and union and guild fees.

3. While the responsibility for bearing the costs will be shared, as will the need for coordination of the production and delivery process, the ultimate responsibility for compliance obligations must rest with a single entity.

4. Effect on Diversity of Programming

The Commission asks for comment on the effect of its proposal on the diversity of available programming. In WGBH's 25 years of experience with captioning, and with knowledge of those institutions which have adopted an across-the-board captioning policy (WGBH National Productions, PBS' National Program Service, Corporation for Public Broadcasting, National Endowment for the Arts, National Science Foundation), never have we known of a program that was not produced due to a captioning requirement. Producers and caption providers have been creative and resourceful in meeting these requirements, funding partnerships have been formed, and volume discounts have been offered, but no program has failed to reach viewers because of a requirement for captioning.

5. Contracts with Captioning Requirements

The Commission also inquires as to previous experience where captioning has been a delivery requirement in contracts. In fact, producers have often been grateful when such requirements are added to contracts, thereby relieving them of the burden of deciding whether to caption or not and at the same time providing a negotiating point when determining licensing and production costs. When there is no question as to whether to caption or not, the decision to include captioning costs in production budgets is a simple one, and costs are passed on invisibly to the ultimate funder.

6. At WGBH, captioning has been included in national production budgets since 1983; only a handful of implementation problems have been experienced in 14 years. Even with these few exemptions, never has a show not been produced due to the in-house captioning policy.

B. Obligations as to Non-Exempt Programming - Transition Rules For New Programming

1. Eight-year phase-in period

The Commission's proposed eight-year phase-in for captioning of all non-exempt programming is a reasonable one if judged by the presently available caption production capabilities of The Caption Center at WGBH and other professional captioning agencies. The additional biannual 25% growth in captioning demand could be readily absorbed by these organizations and the anticipated growth in both independent and in-house captioning departments.

2. During the present comment period, consumers have already begun to express concern about the baseline from which the 25% benchmarks will be counted—will providers be responsible for adding captions to 25% of their program schedules every two years on top of what is presently captioned? Or will providers who have already begun to make efforts to make their schedules accessible be allowed to consider cutting back the amount of captioning provided if they are already over the first benchmark of 25%?

3. It is unlikely that either Congress or the FCC intended for the Video Programming Accessibility provisions of the Telecommunications Act to result in a cutback in the amount of captioning provided. Therefore the Commission may want to consider the use of February 8, 1996 (the date President Clinton signed the law) as the baseline upon which the additional 25% thresholds are added.

4. Program choices

The Commission proposes to allow program providers, owners, and producers "significant discretion regarding what will be captioned to meet the requirement and how to use the funding available for captioning." The likely effect of such discretion is that the most-watched, highest-rated, most-fully funded programs will

be captioned first. This is a sensible path toward eventual full access since the largest number of caption viewers will be served by this plan.

5. However, the Commission should recognize that a significant amount of captioning is presently funded by the U.S. Department of Education through a competitive grant program divided among a number of program types, and therefore the decision as to how to use available funding is not wholly in the hands of providers, owners, and producers.

6. Public interest programming

This is relevant in considering whether certain lower-rated news, public affairs, educational, and children's programming should be considered for special rules. Certainly these program types, along with programs funded by taxpayers and programs which cover governmental activities (e.g., Federal, state, and local legislative and school board sessions) have a greater demand for accessibility for all citizens, even if their ratings are significantly lower.

7. The funds available through the Department of Education can help sort this matter out, but other innovative funding opportunities exist for these types of programs. For example, the city of Fremont, California, working on behalf of its school district and with the local cable company, negotiated a monthly charge of seven cents on each cable bill in order to fund the captioning of city council and school board meetings. In addition, most of the local news captioning around the country is funded by advertisers who receive significant commercial exposure due to their sponsorship. The burden of paying for captioning need not fall entirely on providers or producers.

8. Counting of percentages

The Commission inquires as to how the percentages of captioned programming should be counted by Multichannel Video Programming Distributors (MVPDs). The Commission proposes a system-wide accounting which would total all captioning across all channels carried by each MVPD. We disagree with this method of accounting.

9. In other statements throughout the *Notice*, the Commission clearly indicates its interest in spreading the responsibility for captioning fairly across all facets of the video industry. A system-wide accounting of captioned programs by MVPDs would create an unfair and unequal burden not only on those cable channels and broadcast networks that have been captioning more than the minimum required, but it would also require MVPDs to tediously count the captioned program hours it transmits and then use some undefined formula to demand of one or more other channels to provide additional captioned programs.

10. The coordination of such a process would be virtually impossible and the timing of such decisions would not allow advance planning by either programmer or provider. In addition, since MVPDs in various regions of the country have similar

but not identical channel offerings, an MVPD in New York may place one requirement on a specific channel while an MVPD in California may place a different requirement on the same program service.

11. Alternatively, a channel-by-channel (vs. system-wide accounting) measurement is more fair and efficient. Each non-exempt channel or program service would be equally required to meet the assigned percentages for each time period. All non-exempt channels would bear equal responsibilities for captioning and the MVPDs would only be responsible for captioning its own original non-exempt programs (in addition to the important responsibility of properly passing on the caption data of all other carried channels and stations). The 25, 50, 75, and 100% levels would be delivered to and by the MVPDs as a requirement for carriage.

12. MVPDs and broadcast stations

In addition, the Commission inquires as to whether retransmission of a broadcast station by the MVPD would mean that the MVPD would be responsible for that station's captioning. We do not feel that the MVPD should bear this additional responsibility. Even if, as suggested above, a channel-by-channel measurement is used, the MVPD should not have to bear a responsibility already imposed upon a broadcast station. The station already will have to meet its own captioning requirements and putting this additional monitoring task on the MVPD would be both redundant and unfair. However, by the same token, if a system-wide measurement is used, the amount of captioning a broadcast station produces should not be counted toward the MVPD's totals since the MVPD is merely passing through the station and its captions. When retransmitting a broadcast station's signal, the MVPD should only be responsible for assuring that the station's captions are passed intact to the consumer.

13. Time periods for measurement

The Commission inquires as to the optimum time period for measuring compliance. Since most providers operate on a weekly cycle of programs, it seems logical that the benchmarks should be met across each week's programming. With variations created by occasional special programming or heavy repeat seasons, the Commission may want to consider a certain degree of leeway in terms of meeting the requirements (such as a plus or minus 2% allowance).

14. Reformatting previously captioned programs

One of the most frustrating experiences for caption consumers is to watch a program which was once transmitted with captions or is available as a home video with captions, but is retransmitted without captions. We have heard complaints about this issue for as long as closed captioning has existed and it is likely the most common complaint we hear. Though it is understood why captions can be missing from these retransmissions (editing of original program, misplaced captioned master videotape, lack of knowledge of caption availability), such situations are easily avoided. Providers and producers who fall under the provisions of this

Rulemaking simply need to make a small effort and at times pay a small reformatting expense, to correct these incidents.

15. The Commission inquires as to whether these previously captioned programs should be required to be transmitted with captions, "regardless of whether the provider has already met any percentage requirement." We agree with this provision and would go further to eliminate the exception "... and the provider does not edit the programming." It is both wasteful and inefficient to disregard previous efforts to make programs accessible.

16. Providers and programmers must make greater efforts to reuse caption files, even if a small amount of reformatting is necessary to match the files to changes in the program. Costs of reformatting are small in comparison to first-time captioning and have fallen in the past five years and will fall further in the near future as new techniques and technologies make the process easier and cheaper.

17. Contractual arrangements and close accounting of caption file availability will assure that previously captioned programs will always be transmitted with captions. A clearinghouse for such information could be established, but even today each caption agency can readily inform providers as to what programs it has captioned.

18. Future technology and digital television

The Commission inquires as to the effect of future technology and digital technology on caption creation and delivery. While it is true that the digitization of the production and transmission process will mean that caption technology will have to be recreated and enhanced to meet new standards and specifications, there is no real possibility in the near or long-term future that will allow automatic captioning through such techniques as Automatic Speech Recognition built into TV receivers. The top researchers in this very high technology field regularly visit WGBH's caption production offices and not one scientist in the field has ever predicted that speech-to-text technology of the sophistication needed for understanding a television program will be readily available in the next few decades, if ever.

19. Live captioning requires the ability to handle extremely large vocabularies, multiple speakers and non-discrete speech at a 99-100% accuracy level at speeds up to 250 words per minute. The best technology available today is recognized to fall far short in at least half of these requirements. No expert in the field predicts that automated technology will successfully meet these parameters anytime soon, even if the largest and fastest computers are employed, let alone if the technology is expected to be built into receivers.

20. While the Commission is concerned that captioning requirements do not impede the development of new digital technologies, the important issue regarding the development of such technologies is that the requirements for caption data transmission is recognized when engineering and designing these systems. In the

case of Advanced Television (ATV), the inclusion of enhanced captioning capabilities is being studied and designed by a team of top engineers from within the caption industry in collaboration with members of the Grand Alliance and representatives of TV manufacturers.

21. The captioning requirements are so minor in comparison to the overall complexity of ATV that no one would say captioning is impeding the development of new technology. The Commission need not make any rules which govern the development of new technology except to emphasize the provision of the TV Decoder Circuitry Act of 1990 which states, "As new video technology is developed, the Commission shall take such action as the Commission determines appropriate to ensure that closed-captioning service continues to be available to consumers."⁴

22. Multiplexing and digital compression

The Commission seeks comment as to how to address the question of multiplexing of channels through the use of digital compression technology. Since the newly available bandwidth or technology will enable providers to offer greater program choices and to increase revenue opportunities, there is no reason why these new channels should not fall under the same rules that will be established for single programming strands. Exemptions, when they are determined, should be applied equally to all channels, and no special case should be made for blocking access to these new choices for deaf and hard-of-hearing viewers, who will be paying for them at the same rates as hearing consumers.

23. The technologies that have been or are being designed to enable multiplexing are also able to handle the intact delivery of caption data and therefore there are no technological reasons for limiting compliance for compressed or multiplexed channels. Intact and in-place caption data delivery has already been accomplished in the digital compression transmissions of both the Public Broadcasting Service and the new direct-to-home digital satellite systems.

C. Obligations as to Non-Exempt Programming - Transition Rules
For Library Programming

1. Captioned libraries

In considering obligations for captioning of library programming, we would like to point out that there are already in libraries large numbers of previously captioned programs, many of which are repeatedly transmitted without captions. Before determining rules which place requirements on never-before-captioned library programs, the Commission should assure that, regardless of editing or repurposing or sale of licenses or rights, once a program has been captioned for any venue, those captions will be reused even if slight reformatting is necessary.

⁴ Pub. L. No. 101-431, 104 Stat. 960 (1990) (codified at 47 U.S.C. §§ 303(u), 330(b)); Section IV., paragraph (b)

2. If the Commission considers such a rule, it will be to the providers and producers greatest interest to first assure that a search is done for existing caption files since the cost of reusing caption data is a small percentage of the cost of newly captioning a program.

3. Assured transmission of captions

In its footnote number 135 the Commission refers to a prior discussion of a "possible requirement to transmit with captions any programming that is received with captions." While this may seem an obvious and easily accomplished task, especially in light of the fact that the Commission's Rules (Section 76.606) require that cable operators deliver existing captions intact, problems are regularly reported to WGBH's Caption Center which indicate unintentional removal of caption data and a lack of monitoring of the captions by cable operators. When applying this rule to other video programming providers, the Commission should take note of the fact that lack of awareness and understanding has resulted in numerous violations of its existing Rules and intent.

D. Exemptions of Classes of Programming and Providers
Based on Economic Burden

1. In order to help the Commission make a determination about which classes of programming may be eligible for exemptions based on the economic burden standard, we offer the following information on the various classes delineated in the *NPRM*.

2. Foreign language programming

The Commission is correct in stating that non-Latin alphabets are not technically able to be closed captioned using today's line-21 closed captioning standard for NTSC television. However, the Commission should note that provisions for non-Latin-based alphabets are being made in the Advanced Television closed captioning standard, so that when this technology becomes commonplace for consumers, exemptions based on this class should be reconsidered.

3. At present, many caption agencies have non-English-speaking captioners either on-staff or available via contractual arrangements. The Caption Center at WGBH employs caption writers who are proficient in Spanish, French, German, Portuguese, Danish, Swedish, Norwegian, Czech, Hungarian, and Italian and a growing segment of our business is in non-English captioning or subtitling. We also note that the popular PBS Spanish instruction series, "Destinos," was closed captioned and provides one of the few opportunities for deaf and hard-of-hearing students to learn a non-English language from television.

4. Programming that is primarily textual in nature

At present, there are a few cable channels on many systems that are text-only with the audio from a radio station used as background sound. It would be unnecessary to caption such a channel. The Commission can make a determination as to whether captioning is needed for such channels by examining the nature of the audio portion of the program - is the audio necessary for understanding the presented video information? Or is it just background music or sound? The Commission should also keep in mind that as technology advances, the use of added infomercials and narrow-cast information on such channels may result in more of a need for captioning than presently exists on these channels.

5. Cable access programming

The Public, Educational, and Governmental (PEG) channels are often the lowest-budgeted programming carried by MVPDs. In some communities, however, these channels carry essential local government information such as school board meetings and city council sessions. The Commission should take note of innovative solutions such as the steps taken by the city of Fremont, California referred to earlier. Costs of live captioning of local government meetings were paid by a cable bill add-on. In addition, for pre-produced programming, local access facilities can take advantage of new, low-cost, do-it-yourself captioning software and hardware. These caption authoring systems make it relatively easy and inexpensive for local producers to caption their own material.

6. Instructional programming

There is a great range and variety of instructional programming available locally and nationally. In some communities, a student can enroll in a GED course via television to earn the equivalent of a high school diploma. Other programs, including many produced and distributed by public broadcasting stations, have budgets that can and have readily accommodated captioning, both live and pre-produced. Many PBS Adult Learning Services satellite telecourses have live captioning included as a regular feature. We urge the Commission to take note of the range of instructional programming budgets, the growing use of instructional programming in school curricula, and the significant lack of accessible programming for deaf and hard-of-hearing students when making a determination of exemptions for this class of programming.

7. Advertising

The Commission correctly notes that the cost of captioning a national advertisement (approximately \$200) is tiny compared to the cost of overall production of such a commercial. Marketplace pressures are likely to cause advertisers to seek to assure that their ads are as comprehensively captioned as the programs they support. The major captioning agencies caption thousands of ads every year and when ads are not captioned, it is more often due to lack of awareness or time than lack of interest or budget. Certainly, as the line between short-form ads and long-form infomercials is blurred, the Commission should consider separate requirements for each format.

8. Home shopping programming

We agree that a blanket exemption for this class of programming is unwarranted since the technology exists to provide captioning for these channels. There is also a likelihood that the addition of captions could result in enough additional sales to offset the costs of captioning.

9. Interstitials and promotional advertisements

The daily volume and fast turnaround of newly produced program promotions makes a clear justification for exemptions for this class of programming. While we don't agree that the principal information is often provided through on-screen textual forms, there is much more vital programming that is more readily captioned than these announcements. Certain announcements of this sort have a much longer "shelf life" than others and, particularly in the case of public service announcements, should be considered apart from the daily promotional announcements of upcoming programs.

10. Political advertising

We do not agree that captioning of any sort of video programming constitutes censorship at any time. For this category, the \$200 or less cost per ad is most often a minor portion of the overall cost of the ad.

11. When judging this class of programming, the Commission should note legislation introduced in Congress in 1991 by Rep. Stenny Hoyer of Maryland which stated, "No candidate for the office of President or Vice President may receive amounts from the Presidential Election Campaign Fund under this chapter or chapter 96 [of the Internal Revenue Code of 1986] unless such candidate has certified that any television commercial prepared or distributed by the candidate will be prepared in a manner that contains, is accompanied by, or otherwise readily permits closed captioning of the oral content of the commercial...". We recommend the Commission adopt a similar rule for any publicly funded political advertising.

12. Fundraising activities of noncommercial broadcasters

A distinction must be made between the live portions of public broadcasting's "pledge" or "auction" activities and "pledge programming" itself. Pledge programming is often specially produced programs which are designed to draw viewers during fundraising periods and is often of the highest interest to many viewers. Certainly these programs themselves should not fall under any exemptions granted to the live pledging which surrounds these programs.

13. We agree that live pledge and auction activities should be exempt from captioning requirements. The Commission should note, however, that some simple technology already employed at WGBH provides an automated closed-caption message which repeats itself throughout the live portions. This software (called "Cycle"), when combined with the standard caption encoder, allows a station to create a message for caption viewers that helps deaf and hard-of-hearing viewers participate in pledge and auction. The message could include special TTY phone

numbers and special information about the captioned programs the station broadcasts. WGBH has offered this software free of charge to all public broadcasters.

14. Music programming

Record companies have enthusiastically embraced closed captioning of their music video clips since 1988, when Epic Records asked The Caption Center to closed caption the first songs by the band "Living Colour." Many awards programs which include live performances have been closed captioned for years (including the Grammys, the Television and Motion Picture Academy awards, the Country Music Awards, and the Billboard Music Awards). Parents have been particularly grateful for the opportunity to understand the lyrics their children are listening to and many educators have incorporated the "reading of music videos" into their classes.

15. Weather programming

The Commission raises the issue of the ENR (electronic news room) method of captioning when discussing weather reports. This issue will be discussed later in these comments under Section G., "Standards for Accuracy and Quality." While it is true that an automated newsroom system can make captioning of pre-scripted portions of a news program virtually cost-free, it is also true that the vast majority of weather reports during local news programs is not scripted and therefore is inaccessible to the many viewers who rely on captioned local news. When severe weather is forecast, access to this information becomes even more vital. Weather report scripts can be entered into the ENR system, but they rarely are.

16. Sports programming

We agree with the Commission that sports programming, whether national, regional, or local should not gain a blanket exemption. Many of these programs have been for captioned years and consumers continue to request many more. It is true that some locally produced high school or college sportscasts would not have the budget to incorporate live closed captioning, but we would caution the Commission to carefully consider the outcome of a requirement for alternative on-screen text. If done poorly, such text could be intrusive to all viewers and if done correctly could be just as readily produced as closed captions.

E. Exemptions Based on Existing Contracts

1. Contractual agreements

The Commission proposes that contracts written before February 8, 1996 which affirmatively prohibited closed captioning should be exempt. We recognize the fairness of such an exemption, but have never heard of such contract provisions and are doubtful that any exist.

2. Legislative history

The Telecommunications Act language which refers to requirements that would be "inconsistent" with existing contracts is based on the early legislative history of the

Video Programming Accessibility provisions. When representatives of the deaf community were meeting with representatives of the television industry in 1994, concern was expressed by the latter about syndicated programs that were already distributed on videotape and in the hands of local broadcasters. If captioning requirements forced the syndicators to recall these tapes, caption, and redistribute them, this could constitute a serious financial burden, especially for older programs that were licensed relatively inexpensively.

3. Though most syndicated programs are now distributed via satellite, in those situations where programming is distributed solely by videotape prior to the implementation date of these rules, and where contracts are explicit about assigning the costs of duplication and shipping of those tapes as a one-time only expense, an exemption would be justified.

F. Exemptions Based on the Undue Burden Standard

1. In order to help the Commission make a determination for applying an "undue burden" standard for exemptions, the Commission should take into account the following factors:

2. "Significant difficulty or expense"

While the cost of captioning today spans a wide range and depends on such factors as volume of programming and whether a program is live or recorded, no significant difficulties remain in the production of closed captioning. Closed captioning hardware, software, and services have been widely available in the marketplace since 1980 and there has yet to be a type of programming or situation where captioning has been technically or operationally "significantly difficult" enough to prevent its use. Captioning of live programming is commonplace, multiple time-delayed regional networks have been accommodated, local political debates in one state have been closed captioned via satellite and phone from another state, and captioning has even been made readily available live on the World Wide Web.

3. "Objective criteria"

Consumers and video program providers alike will be best served if narrowly defined criteria can be drawn so that decisions can be made long in advance of either production or air-time. The main factors the Commission suggests for making such determinations (primarily size of production budgets and anticipated ratings or size of audience) would indicate that only a handful of local programs in the smallest of markets would warrant an undue burden exemption.

4. "Standard special relief or waiver-type procedures"

We agree with the Commission's proposal to rely upon the proceedings that would be familiar and readily accessible to many of the parties who would seek exemptions under the undue burden standard. The opportunity should be provided for public

comment and the Commission should be permitted to grant a partial or temporary waiver. These exemptions should in most cases be for limited periods of time so that the Commission could periodically reevaluate particular waivers to determine if they are still warranted. These procedures are preferable to more widely applicable rulemakings which would tend to be overly broad in their applicability and which should be addressed in the process for determining exemptions for classes of programming.

G. Standards for Quality and Accuracy

1. Technical issues

We agree that technical issues can and should be addressed by the Commission. We also have been on the receiving end of numerous customer complaints about inadequate delivery of captions. There are many reasons accurate and timely captions may not be delivered to the consumer, each of which can be addressed by the Commission's rules.

2. Caption creation

Though the Commission states in Section III. G. 1. 3. that "we observe that the basic technical compatibility among captioning services is assured by virtue of Section 15.119 of our rules, which sets forth the technical requirements for transmission and display of closed captioning" this is not consistently true. Section 15.119 indicates that there is an Electronic Industries Association (EIA) specification for line-21 closed caption data, which is codified as "EIA-608." EIA-608 contains many explicit rules for caption creation which many caption agencies do not follow in its details.

3. There is also a schedule for implementation of newly adopted caption-display features (and the data to trigger them) which assures backward compatibility for a lengthy period for owners of older set-top caption decoders. These recommended timelines are also not adhered to by many newer caption agencies. We suggest the Commission explicitly direct caption providers to adhere to both Section 15.119 of its rules as well as EIA-608. With many new entrants to the captioning field expected over the next few years, explicit rules as to creation of caption data will help avoid the sorts of problems we have repeatedly observed.

4. The EIA is also in the process of creating parallel specifications for Advanced Television Closed Captioning which has tentatively been designated "EIA-708." When these documents have been finalized, the Commission should designate their use as well.

5. Assured delivery of captions

While it is true that Section 76.606 of the Commission's rules require a cable operator to deliver existing captions intact and in place, we have observed numerous instances where this rule has been broken. Consumers have contacted our organization and other parties to complain that their cable system is stripping

captions and that the staff of the cable operator have little or no understanding of how to rectify the situation. Monitoring of captions via use of waveform monitors or caption decoders is rare as is the availability of TTYs at cable systems for deaf consumers to communicate with system personnel.

6. When the Commission considers expansion of its rules for passing existing captions, it should consider some mechanism for awareness and enforcement so that its intentions are actually carried out.

7. Quality issues

It is understandable that the Commission would want to avoid ruling on the non-technical quality of captions in the early days of implementation of its rules, **however** quality continues to be a major concern of consumers and purchasers of captioning services alike. Eight excellent guidelines have been suggested by the Consumer Action Network (CAN) and have been quoted in the *NPRM* at section III. G. 1. 4. These guidelines can be interpreted as technical issues as well, since levels of accuracy and proper delivery of data can be measured. The most technically quantifiable guidelines are:

- Caption data and information contained in the soundtrack must be delivered intact throughout the entire program.
- Captions must include all elements of the soundtrack necessary for accessibility, including verbal information, identification of the speaker (if it is not apparent), sound effects, and audience reaction.
- Standards for proper spelling, grammar, timing, accuracy, and placement should be devised.
- Captioning must be reformatted as necessary if the programs on which they are included have been compressed or edited.
- Captioning must remain intact as it moves from its point of origination throughout the distribution chain to the local video provider.

8. These guidelines offered by consumers demonstrate the concerns about existing problems and where problems can be anticipated as the number of captioned programs increases for all video venues. We suggest the Commission not ignore any of these issues, even in the earliest days of implementation.

9. If the Commission is willing to allow low-quality captions under its Rules, this sort of service is likely to become the least common denominator for captioning. Low-quality service could drive out the higher-quality organizations which spend more of their resources on training of staff and reviewing of work and which purchase more expensive equipment to assure the reliability and quality of their

captions and service. There are today numerous capable caption agencies whose prices are competitive and whose work caption consumers recognize as comprehensive and comprehensible. If lower-quality captioning is allowed to proliferate, caption consumers will not receive the benefit of Congress's intent in creating this provision of the Telecommunications Act.

10. Availability of stenocaptioning v. ENR captioning

The Commission has received widely varying estimates of the availability of highly skilled real-time captioners, also known as stenocaptioners. It is true that good stenocaptioners are not common, but there are enough working in the field today to handle all of the captioning on the major broadcast networks, CNN, and dozens of local TV stations. Once a mandate is instituted, the court reporting field will accelerate their efforts and their training to ensure an even greater supply of capable stenocaptioners.

11. Electronic News Room (ENR) captioning can, if carefully and intelligently prepared, provide access to large portions of a news program. But it has been rare that a news operation takes the time to enter into the newsroom computer the script for taped news reports and live sports and weather reports. In most cases, the words spoken by the anchor people are the only captions displayed. Live interviews and live unscripted reports from the field cannot be captioned via ENR captioning, but can be summarized by an entry-level newsroom assistant or intern.

12. In considering the use of ENR captioning, the Commission needs to determine if a news program that is only 50% or 75% accessible can truly be considered captioned. And if allowing ENR captioning as a solution, the Commission should indicate to the users of those systems that additional script transcriptions must be entered into newsroom computer systems to assure fuller access.

13. Lack of marketplace assurance of quality

It should be logical and true that the quality of captioning is assured by marketplace pressures and that consumer demand yields the highest-quality product. This has not been the case in the field of captioning for two key reasons:

- a. Caption consumers do not pay for captions, video programmers do. Therefore, deaf and hard-of-hearing viewers cannot exercise consumer choice when trying to apply pressure for better captioning.
- b. The feedback loop between consumers and purchasers of captioning has not been effective. Most caption consumers don't know who to call if they experience problems with their captions and most of the places they should call do not have TTYs to answer the calls of deaf and hard-of-hearing people. Instead, consumer organizations and caption agencies have been in the middle of this loop which, if it operated more directly, could result in marketplace incentives for quality.

14. Monitoring of quality

The Commission has indicated a strong aversion to mandated quality issues at this time and states in section III. G. 2. 9. that, "we propose to monitor the closed captioning that results from the implementation of our rules and to revisit this issue in the future if we believe that standards for quality and accuracy may be warranted." We recommend strongly that if the Commission decides on this course in addressing quality issues, that, at the outset, a process and timeline for addressing quality-assurance problems be established. We suggest that a joint consumer and industry panel be established to formulate and employ a means of examining quality and to report their findings at the end of each year of implementation. By this process, purchasers of captioning services will understand that the lowest quality captioning will not be allowed to serve as the industry standard.

IV. ENFORCEMENT AND COMPLIANCE REVIEW MECHANISMS

1. Complaint process

We agree that the Commission should enforce its rules through the existing complaint processes and that private parties and government agencies should be allowed to file these complaints with the Commission.

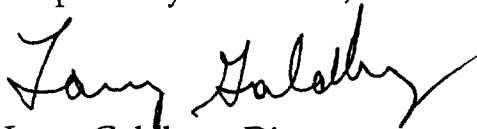
2. It is also a responsible idea for the complaint to first be taken up with the video programming provider directly. As our organization has attempted to troubleshoot various technical problems over many years, we have come to realize some basic information is needed to identify problems:

1. Program name, network, station call letters, and air date and time.
2. Consumer's city and time zone.
3. Consumer's method of signal reception (antenna or cable and, if cable, name of cable operator).
4. Consumer's method of caption display (if set-top box, which model; if built-in decoder what make, model, and year of receiver).
5. Consumer's specific problem - garbling, drop-out, or non-existence of captioning.

V. Summary

The Commission has embarked on a long-anticipated process which years of consumer and industry efforts have made possible. The implementation of closed captioning rules can be accomplished with minimum disruption and burden felt by video programming providers and maximum accessibility experienced by caption consumers. WGBH looks forward to assisting the Commission and our partners—clients and consumers alike—in the fair and effective application of the Video Programming Accessibility provisions of Telecommunications Act.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Larry Goldberg", with a long, sweeping horizontal stroke extending to the right.

Larry Goldberg, Director

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